Arjunan & Ors v Kesatuan Kebangsaan Pekerja-pekerja Ladang & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D4–22–789 OF 1992
ABU MANSOR J
27 JULY 1992

Civil Procedure *— Anton Piller order — Setting aside — Instances as to when an order is issued by the court — Whether evidence will be destroyed or dissipated — Whether there was a risk that records will be tempered with*

Civil Procedure *— Discovery — Anton Piller order — Setting aside — Privilege against self incrimination — Whether defendants must give discovery of documents which might subject them to prosecution — Trade Unions Act 1959 s 55(3)*

Labour Law *— Trade unions — Dispute — Whether members of trade union can apply to court for declaratory judgment — Trade Unions Act 1959 s 44*

Civil Procedure *— Statement of claim and writ — Setting aside — Proper procedure — Whether failure of applicant to use procedure as prescribed was fatal — Rules of the High Court 1980 O 18 r 19 & O 2 r 3*

The plaintiffs were members of the first defendant, the National Union of Plantation Workers ('the NUPW') and the other defendants were the officers of the NUPW. The plaintiffs, being unhappy with how the NUPW conducted the affairs of the NUPW, wrote and asked for the minutes of the NUPW meeting. When they were not forthcoming, the plaintiffs filed a writ and statement of claim praying for certain declarations. Following the filing of the writ, the plaintiffs applied for an Anton Piller order which was served on the defendants who upon legal advice, refused to obey the said order and instead applied to court seeking to set aside the Anton Piller order and also to set aside the writ and statement of claim filed. The plaintiffs also filed a notice of motion for committal of the eighth, ninth and tenth defendants as officers of the first defendant. The court proceeded to hear the defendants' application and postponed the hearing of the other applications to a later date. Counsel for the defendants raised the question of the absence of jurisdiction of the High Court to entertain this type of action and also of the appropriateness of the order sought to be impugned.

Held, allowing the application:

(1) The instances where Anton Piller orders have been issued by the court are where if an Anton Piller order was not immediately issued, there was a great possibility that such evidence or property will be destroyed, dissipated or taken out of the court's jurisdiction. The matters required to be disclosed to the plaintiffs under the Anton Piller order were matters which the first defendant was

by statute required to preserve. As for the allegation that these records of the defendants can be tempered with, the court was of the view that such risks were remote because the records were not exclusively kept by the defendants but also kept by third parties. The urgency that the evidence will be destroyed or dissipated if an Anton Piller order was not given was absent in this particular instance and the defendants were entitled to have the Anton Piller order discharged.

(2) The matters that were sought to be disclosed by the plaintiffs apart from the minutes of the union, included statements of accounts of the union required to be maintained by them under s 55 of the Trade Unions Act 1959 ('the Act'). Under s 55(3) of the Act, the account should be verified by statutory declaration and if not true, would subject their members to prosecution. Therefore, the defendants were entitled to the privilege not to give discovery of documents because such disclosure would incriminate them.

(3) The defendants had not followed the procedure prescribed under O 18 r 19 of the Rules of the High Court 1980 to have the writ and statement of claim set aside but the court held that such non-compliance was not fatal to the defendants.

(4) The disputes between the plaintiffs and the defendants come within the ambit of disputes as defined in s 44 of the Act and shall be decided in the manner directed by the rules of the trade union. It is trite law that a declaratory judgment cannot be given by the court in the exercise of its original jurisdiction where the remedy open to the plaintiff is one prescribed by statute.

[Bahasa Malaysia summary

Plaintif adalah ahli defendan pertama, Kesatuan Kebangsaan Pekerja-Pekerja Ladang ('KKPL') dan defendan yang lain adalah pegawai KKPL. Plaintif, kerana tidak senang hati dengan cara KKPL menjalankan urusannya, telah menulis dan meminta melihat minit mesyuarat KKPL. Apabila minit itu tidak juga dikemukakan, plaintif memfailkan suatu writ dan pernyataan tuntutan meminta deklarasi tertentu. Berikutan pemfailan writ itu, plaintif memohon suatu perintah Anton Piller yang disampaikan kepada defendan. Defendan, atas nasihat undang-undang, enggan mematuhi perintah tersebut dan sebaliknya memohon kepada mahkamah meminta perintah Anton Piller itu diketepikan dan juga pengetepian writ dan pernyataan tuntutan yang difailkan. Plaintif juga memfailkan suatu notis usul untuk perintah komital terhadap defendan delapan, kesembilan dan kesepuluh sebagai pegawai defendan pertama. Mahkamah terus mendengar permohonan defendan dan menangguhkan pembicaraan permohonan yang lain ke tarikh yang kemudian. Peguam defendan menimbulkan soal ketiadaan bidang kuasa Mahkamah Tinggi untuk melayani tindakan seperti ini dan juga kewajaran perintah yang hendak dipersoalkan.

Diputuskan, membenarkan permohonan itu:

(1) Kejadian di mana perintah Anton Piller telah dikeluarkan oleh mahkamah adalah di mana jika suatu perintah Anton Piller tidak dikeluarkan dengan serta-merta, terdapat kemungkinan besar yang keterangan atau harta itu akan dihapuskan, dilesapkan atau dibawa keluar daripada bidang kuasa mahkamah. Perkara yang dikehendaki didedahkan kepada plaintif di bawah perintah Anton Piller itu adalah perkara yang mana defendan pertama dikehendaki oleh statut untuk memelihara. Berkenaan dakwaan yang rekod defendan boleh diubah, mahkamah berpendapat bahawa risiko tersebut adalah sedikit kerana rekod itu tidak disimpan secara eksklusif oleh defendan tetapi juga disimpan oleh pihak ketiga. Tidak terdapat berkepentingan dalam kes ini yang keterangan itu akan dihapuskan atau dilesapkan jika suatu perintah Anton Piller tidak diberi dan defendan berhak mendapat pembatalan perintah Anton Piller itu.

(2) Perkara yang diminta didedahkan oleh plaintif selain daripada minit kesatuan itu termasuk pernyataan akaun kesatuan itu yang mereka dikehendaki menyimpan di bawah s 55 Akta Kesatuan Sekerja 1959 ('Akta itu'). Di bawah s 55(3) Akta itu, akaun itu akan ditentusahkan dengan deklarasi statutori dan jika tidak benar, ahli mereka boleh didakwa. Oleh kerana itu defendan berhak kepada keistimewaan tidak payah memberi penzahiran dokumen kerana pendedahan itu akan menunjukkan bahawa mereka bersalah.

(3) Defendan tidak mengikuti prosedur yang ditetapkan di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk mengetepikan writ dan pernyataan tuntutan tetapi mahkamah memutuskan bahawa ketakpatuhan itu tidak membawa padah kepada defendan.

(4) Pertikaian di antara plaintif dan defendan jatuh di dalam skop pertikaian seperti yang ditentukan dalam s 44 Akta itu dan akan diputuskan dalam cara yang diarahkan oleh kaedah kesatuan sekerja. Adalah undang-undang yang biasa bahawa penghakiman perisytiharan tidak boleh diberi oleh mahkamah dalam menggunakan bidang kuasa asalnya di mana remedi yang terbuka kepada plaintif adalah seperti yang ditetapkan oleh statut.]

[*Editorial Note*: The plaintiffs have appealed to the Supreme Court vide Civil Appeal No 02–375–92.]

Notes

For cases on the setting aside of an Anton Piller order, see 2 *Mallal's Digest* (4th Ed) paras 162–163.

Cases referred to

1 *WEA Records Ltd v Visions Channel 4 Ltd & Ors* [1983] 1 WLR 721 (refd)

2 *PMK Rajah v Worldwide Commodities Sdn Bhd & Ors* [1985] 1 MLJ 86 (folld)
3 *Rank Film Distributors Ltd & Ors v Video Information Centre & Ors* [1980] 2 All ER 273 (refd)
4 *Electrical Industry Workers Union v Registrar of Trade Unions & Anor* [1976] 1 MLJ 177 (refd)
5 *Periasamy s/o Karuppan & Ors v National Union of Plantation Workers & Ors* [1975] 2 MLJ 108 (refd)
6 *Nor Azlan bin Mad Azros & Anor v Hj Jumaat Yusoff (President) & Ors* [1990] 2 ILR 206 (folld)
7 *RCA Sdn Bhd v Pekerja-pekerja RCA Sdn Bhd & Ors* [1991] 1 MLJ 309 (refd)

Legislation referred to
Trade Unions Act 1959 ss 44(1), (5), 55(3), 57(3)
Rules of the High Court 1980 O 18 r 19, O 2 r 3

B Lobo (*Lobo & Assocs*) and *D Kalaimany* (*Kalai & Partners*) for the defendants.

N Navaratnam (*R Sivarasa* with him) (*Sivarasa & Associates*) for the plaintiffs.

Abu Mansor J: The plaintiffs are members of the first defendant, Kesatuan Kebangsaan Pekerja-pekerja Ladang or National Union of Plantation Workers (the 'NUPW') and the other defendants are the officers of the NUPW. It started when the plaintiffs, so it seemed, were unhappy with how the NUPW conducted their affairs. The plaintiffs then wrote for the minutes of meeting of the NUPW. When, according to the plaintiffs, they were not forthcoming, the plaintiffs filed a writ and statement of claim praying for declarations as follows:

(a) a declaration that the second to thirteenth defendants were in breach of their fiduciary duties to the plaintiffs;
(b) an order that the second to thirteenth defendants be restrained and an injunction be granted restraining them whether by themselves, their servants or agents or otherwise howsoever from transferring, disposing of, mortgaging, assigning, charging, or diminishing in any way or otherwise dealing with howsoever any of the assets of the first defendant and in particular from proceeding further in any way howsoever with the proposed redevelopment of the PPN Hostel at No 1, Lorong Utara 'B', sek 27, Petaling Jaya;
(c) an order that the first defendant and second to tenth defendants be restrained and an injunction be granted restraining them, whether by themselves, their servants or agents or otherwise howsoever from expelling or suspending or continuing to suspend or expel the first, third, seventh and eighth plaintiffs from the membership of the first defendant;

(d) an order for an account to be taken of the receipts and payments, income and expenditure and assets and liabilities of the first defendant from 1985–1992;
(e) damages against the defendants for loss and damages arising out of their breach of contract and fiduciary duty to the plaintiffs;
(f) an order directing the second to thirteenth defendants to pay to the first defendant and/or reimburse the first defendant's account such sums as may be found upon enquiry and taking of accounts to be due and payable by the same to the first defendant;
(g) such further or other orders, relief, remedies or directions as this Honourable court may deem fit to order in the circumstances of this matter; and
(h) costs.

Following the filing of the writ, the plaintiffs applied for an Anton Piller order for the supply of the matters referred to in the orders dated 3 June 1992. When the plaintiffs served a copy of the said orders on the defendants at their premises, the defendants did not obey the orders forthwith but instead sought legal advice. After obtaining legal advice, the defendants refused to obey the said orders. They instead filed their application in encl (8) seeking to set aside the order dated 3 June 1992 and also to set aside the writ and the statement of claim filed. The plaintiffs also filed a notice of motion for committal of the eighth, ninth and tenth defendants as officers of the first defendant. I proceeded to hear encl (8) in open court and postponed the hearing of the other applications to a later date. The defendants' application in encl (8) is supported by the statement containing the grounds of that application.

Mr Lobo for the defendants/applicants raised the question of the absence of jurisdiction of the High Court to entertain this type of action as the one before me.

The defendants also raised the question of the appropriateness of the order sought to be impugned. In the normal run of cases, an Anton Piller order would only be issued if the defendants had incriminating documents which if not granted, there is a real possibility such evidence may be destroyed. The defendant says that it is not appropriate when the defendants, by the Trade Unions Act 1959 ('the Act') or their regulations, are required to maintain their documents and accounts. The argument that there is urgency just falls to the ground, the defendant submits.

As to the propriety of the defendants' application following the case of *WEA Records Ltd v Visions Channel 4 Ltd and Ors*,[1] the defendants may refuse immediate compliance of this order obtained ex parte and make an urgent application to have the order set aside. This is the course of action being pursued by the defendants, but at their peril, for if the defendants fail, then they could be guilty of contempt.

In his submission, counsel for the applicant gave a common submission at one go to ask for both the Anton Piller order and the writ to be set aside.

The defendants' counsel submitted that if the application is scrutinized, it would be clear that there is no basis for the application. Counsel submits

A that as for the first plaintiff requiring the details of the illegal loan to GATCO for the period of accounting from 1986–1990, it is a fact that according to para 10 of encl (7), the first plaintiff was sitting in the executive council of the first defendant from 1980–1988. The first plaintiff therefore would have had full access to these accounts.

B Then in exh A encl (4) p 3, the plaintiffs spoke of some irregularities in the account of the first defendant. There is evidence that the accounts had been audited by Rabin & Co and from the findings of Rabin & Co, the position of the account is far from clear. The defendants' counsel submitted that since these documents are statutory documents, the defendants are duty bound to keep them. The plaintiffs' fear that they may be destroyed or C tampered with has no basis whatsoever. He submitted that the plaintiffs have a simple remedy if they suspect illegality and that would be to complain to the registrar of trade unions who acts as the policing body for all trade unions and the allegations of unauthorized and unlawful expenditure by the first defendant may be investigated as the accounts must have been in accordance with s 55(3) of the Act: 'The account shall be verified by D statutory declaration, and the union shall cause the account to be audited by some fit and proper person approved by the Registrar.'

Mr Lobo further submitted that in addition to the above, the plaintiffs may also have recourse to s 57(3) and apply to the registrar and under s 57(3), the registrar may, either acting for a member or on his own behalf, E order the account books and other records of a trade union to be made available for inspection or audit by a fit and proper person approved by him. He says further under s 60(1) of the Act that any complains can be made to the sessions court if any officer, employee or member of any union has unlawfully expended or withheld any money of the union and the court shall order delivery of such money or property to the trustees of the union F and s 60(3) makes it a criminal offence if the order is not obeyed. He submitted that in view of s 44(1):

> Every dispute between —
>
> G (a) a member or person claiming through a member or under the rules of a registered trade union or any branch thereof, and the union or any branch thereof or an officer thereof;
> (b) any person aggrieved who has ceased to be a member of a registered trade union or any branch thereof, or any person claiming through such person aggrieved, and the union or any branch thereof, or an officer thereof;
> H (c) any registered trade union and any branch thereof; ...
>
> shall be decided in the manner directed by the rules of the trade union, and the decision so given shall be binding and conclusive on all parties; and application for the enforcement thereof may be made to a Sessions Court.

I Then under s 44(5):

> Where the rules of a registered trade union direct that disputes shall be referred to the courts, the dispute shall be determined by a Sessions Court.

Counsel submitted further that where Parliament has designated a form for settlement of disputes, he says that the plaintiffs' application for the Anton Piller order was misconceived as far as a trade union was concerned.

Mr Lobo submitted another ground on which he relies as to why the Anton Piller order should be discharged, that is that police reports have been made alleging criminal matters both in reports to the police alleging dissipation of assets. He submitted that on the authority of *PMK Rajah v Worldwide Commodities Sdn Bhd & Ors*,[2] where Dato' Zakaria Yatim applied the principles in *Rank Film Distributors Ltd & Ors v Video Information Centre & Ors*[3] and held that the defendants were entitled to the privilege not to give discovery of documents as the disclosure would incriminate them and allowed the defendant's application not to give discovery of documents.

The defendants also submitted that in the application to obtain the Anton Piller order, there was suppression of the following facts:

(a) The account of the defendants sought to be discovered was from 1986–1990 and from 1986–1988 the first plaintiff was a member of the first defendant's EXCO and he participated in the decision making of the first defendant. The defendants further submitted that the first plaintiff was not motivated by an honest and genuine intention. He waited until after losing his election and becoming chairman of the reformation committee.

As for the plaintiff's writ asking for declarations, the defendants' counsel urged the court that the application should not be granted. He cited the Federal Court case of *Electrical Industry Workers Union v Registrar of Trade Unions & Anor*[4] where HS Ong FJ spoke of the undesirable consequence of declaratory orders:

> There is also, as Zamir says in the *Declaratory Judgment* (1962) pp 47–48, the undesirable consequence that such declaratory orders may, in subsequent proceedings upon the subject-matter of the opinion, embarrass the courts which would hardly be able to ignore it, and cause confusion and uncertainty to future litigants ...
>
> ... I am of the opinion that what the court is being asked to do is to define and draw up guidelines for the registrar as to his functions under the Ordinance and the manner he is to carry them out. This, I do not think, this court should do.

Counsel urged this court not to entertain this writ. This is especially so because the plaintiffs had already sought the help of the director-general (see encl (4) paras 19(a) and 32). If the director-general should act on the plaintiffs' action, it might even result in the winding-up of the union under s 15(1)(b). The defendants say that what the plaintiffs seek by declaration is to usurp the function of the registrar. This, the defendants say, should not be allowed.

The defendant also cited *Periasamy s/o Karuppan & Ors v National Union of Plantation Workers & Ors*[5] where members of a trade union sought an injunction to restrain the defendant from holding office without having referred the matter to the registrar of trade unions, Abdul Hamid J (as he then was) held that the applicants should have exhausted all domestic remedies before coming to court.

A The defendants' counsel cited *Nor Azlan bin Mad Azros & Anor v Hj Jumaat Yusoff (President) & Ors*,[6] where my learned brother Shankar J held that where a dispute between union members and the union existed and the plaintiffs have not complied with ss 40, 44(6) and 44(9) of the Act and where there was a remedy prescribed by statute, a declaratory judgment cannot be given and he struck off the suit.

B Then, finally, the defendants cited the decision of the Supreme Court in *RCA Sdn Bhd v Pekerja-pekerja RCA Sdn Bhd & Ors*,[7] giving guidance to us in a similar vein as to the *Electrical Industry Workers Union*'s case[4] above, that the granting of the injunction may cause embarrassment to the Minister and to the courts as canvassed in that case.

C The defendants' counsel prays that the Anton Piller order be discharged and the writ struck out for reasons stated.

On the first issue, as to whether the court has or has no jurisdiction, Mr Navaratnam for the respondents/plaintiffs contended that none of the remedies in the writ filed by the plaintiffs gave what the plaintiffs prayed for, a declaration that the defendants were in breach of their fiduciary duties

D and an action for an account for damages for such breach. He said none of these matters were covered by the Act and therefore the plaintiffs have come to this court. Plaintiff's counsel complained that the defendants did not comply with the Anton Piller order.

I had to consider the first issue whether the court has jurisdiction to so

E entertain the writ and the application for the Anton Piller order. I will deal with the application for an Anton Piller order. I find merit in the argument of the defendants' counsel that an Anton Piller order should not have been granted in the first place.

I am of the view that the instances where Anton Piller orders have been issued by the court are where there is a great possibility that certain

F evidence or property are about to be dissipated and if an Anton Piller order was not immediately issued, then there is great possibility that such evidence or property are going to be destroyed, dissipated or taken out of the court's jurisdiction.

I consider that no such factors are present in this case that justified the

G issue of such an order. I considered that it is true, as submitted to me, that the matters required to be disclosed to the applicants are matters which the union is by statute required to preserved, such as minutes books and records of account which are open for inspection of members and I agree with the construction submitted before me by the defendants that if the plaintiffs had not tried to obtain them free of charge, for which they are not

H so entitled, copies would have been provided by the defendants. On this matter, it is clear to me that some misunderstanding have arisen between the plaintiffs and the defendants over the supply of copies to whatever documents were required but whatever it is, it is quite clear to the court that the defendants were not stopping the plaintiffs from inspecting the docu-

I ments or records but that the defendants were not willing to supply copies of them without any payment whatsoever. The word 'supply' as used by the defendants in their letters of reply can quite clearly be interpreted as supply free of charge.

As for the allegation that these records of the defendants can be tampered with, I am of the view that the chances of that happening are remote. I hold that view because they concern records which are not exclusively kept by the defendants. They are records which are also kept or they are transactions or dealings with third parties, for example, in the NUPW paying to GATCO or valuation reports obtained by them of properties mortgaged which transactions are matters of complaint by the plaintiffs. I am of the firm view that these dealings with outsiders, other than the NUPW, cannot be falsified and if they are, their falsity can easily be discovered through records in the custody of the outsiders whom the NUPW deals with.

I therefore rule that the urgency that the evidence will be destroyed or dissipated if an Anton Piller order is not given, is absent in this particular instant. On this ground alone, I am justified in exercising my discretion in holding that the Anton Piller order was not a proper remedy in this case and the defendants succeed in their application to have the Anton Piller order discharged.

On the issue that the defendants may claim privilege from disclosure of materials which may incriminate them in criminal prosecutions, the plaintiff's counsel contended that the case of *PMK Rajah v Worldwide Commodities Sdn Bhd & Ors*[2] does not apply to this case as the materials sought to be disclosed pertain to civil cases only. I find merit again in the argument of the defendants' counsel and hold that *PMK*'s case[2] is relevant and I apply that case. The matters that are sought to be disclosed by the plaintiffs apart from minutes of the NUPW include statement of accounts of the NUPW, required to be maintained by them under s 55 of the Act. Under s 55(3), the account shall be verified by statutory declaration and if not true, will subject their members to prosecutions. What is stated by the plaintiff's counsel that it would only be for civil cases, is not true. I hold that *PMK Rajah v Worldwide Commodities Sdn Bhd & Ors*[2] will apply and I therefore discharge the Anton Piller order granted.

I come now to consider the defendant's application to set aside the writ and statement of claim on the ground of absence of jurisdiction of the High Court by virtue of statutory provision. To this, the plaintiff's counsel contended that the High Court has jurisdiction to entertain the writ. The matters under their claim fall outside the scope of the Act. The claim was for breach of fiduciary duty of the defendants and their executive officers and trustees.

The plaintiffs say that the defendants have followed the wrong procedure and failed to state the grounds in the application to set aside the writ and the statement of claim. The defendants replied that the plaintiffs had replied to the notice in encl (8) and never objected to the application until the date of the argument.

I find merit in the contention of the plaintiffs that the defendants had not followed proper procedure to have the writ and the statement of claim set aside. The procedure for it is O 18 r 19 of the Rules of the High Court 1980, where the applicant is required to state in the summons either ground (a), (b) or (c) of O 18 r 19:

A (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that —

(a) it discloses no reasonable cause of action or defence, as the case may be; or

B (b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

C (3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

An applicant like the defendants therefore, is required to state the grounds he is proceeding on and if he is proceeding on the ground under para 1(a), no evidence shall be admissible and all affidavit evidence shall be dis-

D allowed. I find that O 2 of the Rules of the High Court 1980 has now provision for the effect of non-compliance with the said rules which has the effect of not adhering strictly to forms of beginning a process. Order 2 r 3 provides:

> The Court shall not wholly set aside any proceedings or the writ or other

E originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

I find it was not fatal that the defendant/applicant did not use the grounds spelt out in O 18 r 19(a), (b) and (c).

The complains of the plaintiffs here, so they contend, do not come under

F the Act. They were claiming by way of declaration that the defendants were in breach of their fiduciary duty. They ask how is it that they do not and the answer to that question is that they do not adhere strictly and faithfully to the Act, they alleged that the executives went outside their powers.

I make a finding that that the disputes between the plaintiffs and the

G defendants come within the ambit of disputes as defined in s 44 of the Act and shall be decided in the manner directed by the rules of the trade unions and the decisions so given shall be binding on all parties and the enforcement thereof may be made to a sessions court.

I find that there is merit in the argument of the defendants' counsel that there is absence of jurisdiction. The matter of this dispute is regulated by

H the provisions of the Act for instance referred to the director-general of trade unions or it may be settled by arbitration. All in all, I find that there is a comprehensive Act to govern all aspects of the activities of the defendants including the union funds. I am in agreement with authority of *Nor Azlan bin Mad Azros & Anor v Hj Jumaat Yusoff (President) & Ors*[6] where

I Shankar J at p 208 said: 'It is trite law that a declaratory judgment cannot be given by the court in the exercise of its original jurisdiction where the only remedy open to the plaintiff is one prescribed by statute.' I adopted that view in a similar situation of disputes between members and the

Executive Council (EXCO) of the Union and held that it is trite law that a declaratory judgment cannot be given by the court in the exercise of its original jurisdiction where the remedy open to the plaintiff is one prescribed by statute.

For these reasons, I allow the defendant's application and I dismiss the writ or case with costs to be taxed and paid by the plaintiffs to the defendants.

Application allowed.

Reported by Yap Foo Ken